tariffs subverts the ability of providers to enter into such agreements. USWC argues that this requirement is inconsistent with the statement in Rule 8.1 that providers are permitted to reach negotiated, mediated, or arbitrated agreements. We disagree with these suggestions.

3. As explained in Decision No. C96-347, pages 26 through 30, a tariff process and the negotiation procedures defined in § 252 of the Act may coexist.[4] In our contemplation, a provider's tariff will set forth the rates and charges for interconnection and unbundled network elements, and standard terms and conditions for such services.[5] There are other matters, however, relating to interconnection and unbundling which may not be contained in a tariff, and which are appropriate for negotiation or arbitration. *See* Decision No. C96-347, page 27, paragraph 3. In short, the provisions of Rule 8.1 do not undermine the negotiation/arbitration process provided for in § 252, nor is the rule internally inconsistent. The language to which USWC and AT&T object simply provides that a privately negotiated agreement may not contravene

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[4] Decision No. C96-347, page 28 and 29, observed that any interconnection agreement adopted by negotiation or arbitration under § 252 must be made public. Additionally, § 252(i) compels a local exchange carrier to make available any interconnection service or network element provided under an approved (by the Commission) agreement to any other requesting provider upon the same terms and conditions as those provided in the agreement. The arguments by USWC and AT&T imply that § 252 does not constrain agreements which may be negotiated by providers. In fact, the provisions of the Act (*e.g.*, agreements must be made public and approved by State commissions, and a provider must offer approved terms and conditions to any other requesting provider) substantially confine the negotiation process. The provisions of Rule 8.1 (*i.e.*, interconnection agreements may not contravene the provisions of a provider's currently effective tariff) do not circumscribe interconnection negotiations significantly more than the provisions of § 252(i).

[5] This requirement is similar to the requirements of § 252(i). We also note that, pursuant to § 252(f), USWC may file with the Commission a statement of the terms and conditions generally offered to comply with the requirements of § 251.

the provisions of a currently effective tariff. The rule still allows for negotiation and arbitration on matters not addressed by tariff.

4. Next, AT&T objects to the language in Rules 8.1 and 8.2 which states that interconnection agreements shall be reviewed by the Commission pursuant to the Rules of Practice and Procedure. We agree that these provisions should be deleted from the rules, and grant the request for RRR to the extent it suggests modification of these rules. Notably, after Decision No. C96-347 was issued we adopted emergency rules establishing specific procedures for the review and approval of interconnection agreements. *See* Decision No. C96-413. We have also initiated proceedings to adopt permanent rules for the review of such agreements. *See* Decision No. C96-440. In light of these subsequent events, Rules 8.1 and 8.2 will be modified. Rule 8.1 will be amended to provide:

> Nothing in Rule 7 shall be construed to limit a telecommunications provider's ability to reach a negotiated, mediated, or arbitrated agreement with respect to the rates, terms, and conditions associated with interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a 'White Pages' directory. Such agreements shall not be inconsistent with the rates, terms, or conditions contained in a telecommunications provider's currently effective tariff~~, and will be processed according to the applicable Commission Rules of Practice and Procedure~~.

Rule 8.2 will be amended to provide:

> All agreements for interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a 'White Pages' directory shall be submitted to the Commission for approval ~~and will be processed according to the applicable Rules of Practice and Procedure~~.

D. Rule 2.10--Definition of "Incumbent Telecommunications Provider"

1. MCI[6] and TCI *et al.* objected to the definition of "incumbent telecommunications provider" set forth in Rule 2.10 to the extent the factors from § 251(h)(2) are stated in the disjunctive. In part, the definition of "incumbent telecommunications provider" was based upon § 251(h)(2). That statute provides that the Federal Communications Commission ("FCC") may, by rule, provide for the treatment of a local exchange carrier ("LEC") as an incumbent LEC if:

> (1) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by an incumbent LEC (as defined in § 251(h)(1));
>
> (2) such carrier has substantially replaced an incumbent LEC; *and*
>
> (3) such treatment is consistent with the public interest, convenience, and necessity.

Rule 2.10 incorporates these provisions with one exception: the three factors are stated in the disjunctive "or" (*i.e.*, any one of the findings stated above would result in treatment of a new entrant as an incumbent LEC). MCI and TCI *et al.* contend that the rule should conform to the Act by using the conjunctive "and."

2. We accept this suggestion, and modify the rule accordingly. As noted above, this portion of Rule 2.10 was, in fact, based upon § 251(h)(2). Since the rule was modelled upon the

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[6] MCI argued that the Commission should conform the definition of "incumbent telecommunications provider" to § 251(h)(2). We interpret this argument as, not only an objection to the three-year test specified in the rule, but also as an objection to changing language of § 251(h)(2) to the disjunctive "or."

Act, upon reconsideration we agree that it should be consistent with its provisions. Rule 2.10 will, therefore, be amended:

> A telecommunications provider that on February 8, 1996, provided telephone exchange service in Colorado and either (a) on such date was a member of the exchange carrier association or (b) is a person or entity that became a successor or assign of a member described in clause (a). If a provider has held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years, such provider shall be considered an incumbent unless the Commission determines that such designation is not in the public interest. A telecommunications provider may also be considered an incumbent telecommunication provider if: (a) such provider occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a provider described above; (b) such provider has substantially replaced an incumbent telecommunication provider described above; ~~or~~ and, (c) the Commission determines that such designation is in the public interest.

3. A number of parties also object to Rule 2.10 to the extent it provides that a new entrant shall be considered an incumbent three years after certification, absent a Commission determination that such designation is not in the public interest. These parties argue that this provision is unlawful inasmuch as it contravenes the Act. In addition, these parties contend that the choice of three years, after which new entrants will be treated as incumbents, is arbitrary and unsupported in the record. We reject these arguments.

4. First, we conclude that the Act does not preempt the proposed rule. The significance of this issue (*i.e.*, when a new entrant shall be considered to be an incumbent) relates to the question of whether new entrants will be subject to interconnection and unbundling requirements set forth in the rules. Decision No. C96-347, pages 8 and 9, points out that the Act preserved

substantial State prerogative with respect to establishing interconnection and unbundling rules. *See* § 251(d)(3) (in prescribing and enforcing rules, the FCC shall not preclude the enforcement of State access and interconnection regulations which are consistent with § 251 and which do not substantially prevent implementation of the purposes of the Act); § 253(b) (nothing in § 253 shall affect the ability of a state to impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers); § 261(b) (nothing in the Act shall be construed to prohibit any state commission from enforcing regulations prescribed prior to the Act, or from prescribing regulations after the date of enactment, if such regulations are not inconsistent with the Act); § 261(c) (the Act does not preclude a state from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the state's requirements are not inconsistent with the Act or the FCC's regulations).[7]

5. These provisions indicate that Congress intended to permit the states to take a significant, independent role in establishing interconnection and unbundling requirements. The new

[7] The FCC is presently conducting rulemaking to implement the Act. As such, no federal regulations yet exist which might arguably preempt our rules.

entrants' argument that Rule 2.10 is preempted implies that the Act **compels** the States (as opposed to the FCC) to treat incumbents and new entrants differently. We find no such indication in the Act.

6. Furthermore, we find that Rule 2.10 is not inconsistent with the provisions of the Act. Notably, the rule does not automatically treat a new entrant as an incumbent three years after certification. The rule, in effect, creates a presumption that this should occur. However, a new entrant will be permitted to demonstrate to the Commission that designation as an incumbent is not in the public interest. This provision is not inconsistent with specific requirements of the Act.[8]

7. Moreover, the new entrants' position that we are precluded from adopting such a rule is itself inconsistent with the intent of the statute. Specifically, that argument, in effect, holds that only the FCC may decide to treat a new entrant as an incumbent.[9] A state would be unable to adopt this policy even if it were in the public interest for the citizens of that state. This position would substantially interfere with state authority to establish and enforce interconnection and unbundling requirements, **including for new entrants**, in contravention of the clear intent of the Act. Assuming (as we do) that states retain the prerogative to establish interconnection and unbundling rules **which apply to new entrants**, Rule 2.10 is a permissible exercise of our authority.

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[8] We note that § 251(h)(2) permits the FCC, by rule, to provide for the future treatment of new entrants as incumbents.

[9] Indeed, in its February 28, 1996 comments, MFS made this exact argument.

8. As for the alleged arbitrariness of the three-year time period, this provision was specifically suggested by Commission Staff and the Colorado Office of Consumer Counsel ("OCC"). *See* Staff/OCC February 20, 1996 comments, page 6. Staff and the OCC stated that three years should give new entrants ample time to establish themselves in the market, while the eventual unbundling of new providers' networks would serve to enhance competition. For purposes of adopting these rules, we accept that rationale.

9. Finally, we again note that the rule will permit new entrants, in the future, to demonstrate to the Commission that the public interest requires that they not be treated as incumbents even after three years. The parties who oppose the rule essentially object to being compelled to prove, in future proceedings, that there is good reason to continue to accord them extraordinary treatment (*i.e.*, the rules exempt new entrants from the unbundling requirements imposed upon incumbents). These objections are not well-taken.

E. Rule 9.1--Exemption For Rural Telecommunications Providers

In its application for RRR, CITA requests that we modify the criteria in Rule 9.1 relating to *bona fide* requests for service from a rural telecommunications provider. We will grant this request, in part only. Rule 9.1 states that rural telecommunications providers are exempted from a number of the rules until they receive a *bona fide* request for interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a White Pages directory, and

such request is approved by the Commission. CITA argues that a request for publication of a White Pages directory should not constitute a *bona fide* request for service as would precipitate proceedings under Rule 9.2. Since we accept this contention, Rule 9.1 will be amended to provide:

> Rules 3, 4, 5.4 through 5.10, 5.12, 6, 7, and 8 shall not apply to rural telecommunications providers until: (1) such company has received a *bona fide* request for interconnection, the termination of local traffic, or the purchase of an unbundled network element~~, or publication of a "White Pages" directory~~; and, (2) such request is deemed by the Commission to be technically feasible and not unduly economically burdensome.

F. Rule 3--Imposition Of Interconnection Mandates Upon New Entrants

1. A number of the parties object to the provisions in Rule 3 which impose identical interconnection requirements upon new entrants as are imposed upon incumbents. The rule mandates that new entrants, like incumbents, interconnect with the facilities and equipment of any requesting provider at any technically feasible point. While we reject the requests to modify the rule, we comment upon some of the arguments made in the applications for RRR.

2. The objecting parties first contend that the Act precludes the Commission from requiring new entrants to interconnect with other providers at any technically feasible point. The above discussion sets forth our views regarding the authority of State commissions to adopt interconnection and unbundling requirements in light of the provisions of the Act. That discussion applies here as well.

3. We point out that under the Act, § 251(a)(1), all providers, including new entrants, have the duty to interconnect directly or indirectly with the facilities and equipment of other providers. In choosing to treat all providers equally (*i.e.*, requiring even new entrants to interconnect at any technically feasible point), we have concluded that such a rule will promote competition in the local exchange market and will benefit end-users. For example, this rule will give all providers equivalent access to the networks of new entrants for purposes of terminating calls on those networks. Notably, comment in this docket (*e.g.*, by USWC) indicated that, with competition in the local exchange market, even the incumbent will need to interconnect with the networks of new entrants when terminating calls on those networks. USWC further noted that some of the potential new entrants in the Colorado market already have substantial facilities in place.

4. In their opposition to Rule 3.3, the new entrants have made conclusory statements such as: the rule creates a substantial burden for new entrants and constitutes a barrier to entry; the rule will deter competition generally; rule will deter facilities-based competition specifically; etc. Little explanation was offered in support of such allegations. As we understand the arguments, the new entrants essentially suggest that imposition of identical interconnection mandates on new entrants and incumbents

will discourage investment in new facilities on the part of new entrants. If a new entrant must provide access to its new facilities at any technically feasible point, the argument goes, that provider may not undertake construction of such facilities.

5. We are not persuaded by this argument. Decision No. C96-347 pointed out that the willingness of new entrants to construct facilities will likely be influenced by other factors. Some of these include the price of access to other carriers' networks, the cost of new facilities, the present availability of satisfactory facilities, etc.[10] We are not convinced that mandating equivalent interconnection standards for both new entrants and incumbents will cause new entrants to forsake otherwise prudent investment in new facilities.

6. Given the necessity of interconnection for all providers, good reason should exist to treat carriers disparately with respect to interconnection mandates. No persuasive reason was offered in this case.

7. We finally comment upon the AT&T contention that imposition of identical interconnection requirements constitutes *de facto* repeal of the unbundling exemption for new entrants. We disagree. Rule 6 exempts new entrants from the unbundling mandate. As such, only incumbents will be required to price network elements on an unbundled basis. This exemption for new entrants is unaffected by the interconnection requirements in Rule 3.

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[10] We emphasize that the rules compel only incumbents to unbundle their network. To the extent pricing of network elements will affect competition, the rules accord new entrants an advantage by requiring only incumbents to unbundle.

G. Loop Unbundling

AT&T reiterates its request that Rule 8 should require incumbents to unbundle the loop into three separate components: loop distribution, loop concentrator/multiplexer, and loop feeder. We again reject this suggestion for the reasons discussed in Decision No. C96-347, page 46. We simply note here that our rejection of AT&T's proposal does not preclude it from requesting unbundled loop elements when negotiating interconnection agreements.

H. Conclusion

The applications for RRR raise a number of other issues not specifically discussed above. We find that those issues were adequately addressed in Decision No. C96-347. Except as specifically stated in the above discussion, the applications for RRR will be denied.

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration filed by U S WEST Communications, Inc., is denied.

2. The application for rehearing, reargument, or reconsideration filed by AT&T Communications of the Mountain States, Inc., is granted consistent with the above discussion, and is otherwise denied.

3. The application for rehearing, reargument, or reconsideration filed by TCI Communications, Inc., Teleport

Communications Group Inc., and Sprint Communications Company L.P. is granted consistent with the above discussion, and is otherwise denied.

4. The application for rehearing, reargument, or reconsideration filed by MCI Telecommunications Corporation is granted consistent with the above discussion, and is otherwise denied.

5. The application for rehearing, reargument, or reconsideration filed by MFS Intelenet of Colorado, Inc., is denied.

6. The application for rehearing, reargument, or reconsideration filed by the Colorado Independent Telephone Association is granted consistent with the above discussion, and is otherwise denied.

7. The rules attached to Decision No. C96-347 are revised consistent with the above discussion and are hereby adopted. This order adopting rules shall become final 20 days following the Mailed Date of this Decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this Decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

8. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register*

along with the opinion of the Attorney General regarding the legality of the rules.

9. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion by the Attorney General.

10. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration to this Decision begins on the first day following the Mailed Date of this Decision.

This order is effective immediately upon its mailed date.

B. ADOPTED IN SPECIAL OPEN MEETING April 25, 1996.

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
RESIGNED EFFECTIVE APRIL 5, 1996.

(Decision No. C96-449)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE PROPOSED RULES REGARDING IMPLEMENTATION OF § 40-15-101, *et seq.*- RESALE OF REGULATED TELECOMMUNICATIONS SERVICES.	)))))	DOCKET NO. 95R-557

COMMISSION DECISION GRANTING, IN PART, AND DENYING, IN PART, APPLICATION FOR RECONSIDERATION, REARGUMENT, OR REHEARING AND ADOPTING RULES

- - - - - - - - - - - - - - - - - - - -

Mailed Date: April 26, 1996
Adopted Date: April 25, 1996

- - - - - - - - - - - - - - - - - - - -

I. **BY THE COMMISSION:**

A. **Procedural Background**

1. This matter is before the Commission to consider the Applications for Rehearing, Reargument, or Reconsideration ("Applications for RRR") of Decision No. C96-351, timely filed on April 22, 1996, by AT&T Communications of the Mountain States, Inc. ("AT&T"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); TCI Communications, Inc., Teleport Communications Group Inc., and Sprint Communications Company L.P. (collectively "TCI *et al.*"); and US WEST Communications, Inc. ("USWC").

2. Decision No. C96-351 was mailed on April 1, 1996. In the decision, the Commission adopted Rules for the Resale of Telecommunications Exchange Services, 4 CCR 723-40. The rules were attached to the decision.

3. The Applications for RRR take issue with our adoption of Rules 2.2, 3.6, 6, 7.1, 8.1, 8.3 and 8.4. Based on our discussion below, we will grant in part and deny in part these Applications for RRR.

B. **Discussion**

1. Rule 2.2. MCI, MFS, TCI *et al.*, and USWC all took issue with Rule 2.2 as adopted. Specifically, all four of these applicants for RRR objected to the provision of Rule 2.2 which imposes incumbent status on new entrants after three years have passed post-certification. According to Rule 2.2, if the new entrant believes, after three years, that it should not be treated as an incumbent, the new entrant may apply with the Commission for continuation of new entrant status.

a. MCI and MFS argue that the three year test improperly places the burden on a new entrant to prove that it should not be treated as an incumbent after three years. We are of the opinion that this burden is not so significant as to constitute a barrier to entry. Further, we do not believe that it impairs our ability to consider on a case-by-case basis whether a new entrant should be treated as an incumbent. It merely creates a rebuttable presumption that after three years post-certification, a new entrant will be sufficiently established to be treated as an incumbent.

b. MFS also argues that the three year test impermissibly imposes the additional burden on new entrants of charging the now-existing incumbent LECs' wholesale prices. MFS

misconstrues the rule. There is no requirement that the wholesale rates to be charged by a new entrant reclassified as an incumbent will be the same as the wholesale rates charged by now-existing LECs. There is no necessity to modify Rule 2.2 to correct this misapprehension.

c. TCI *et al.* also assert that the three year test imposes improper burdens on new entrants. Specifically, TCI *et al.* claim that the three year test would arbitrarily impose on new entrants the obligation to charge wholesale prices for services to be resold. As discussed above, we do not believe that the burdens imposed by the three year test are unreasonable.

d. USWC takes an entirely different approach--it argues that new entrant status should expire on July 1, 1999, without regard to certification date for the new entrants. We believe that such a limitation would arbitrarily abolish the competitive toe-hold created by the Telecommunications Act of 1996 ("the Act") by differentiating between the regulatory schemes applicable to new entrants and to incumbents. Under USWC's proposal, a new entrant obtaining certification late in the set three-year period would be reclassified as an incumbent regardless of its inability to establish itself through operation over time. We will reject USWC's argument.

e. In addition, TCI *et al.* argue that the definition contained in Rule 2.2 improperly uses the disjunctive "or" instead of the conjunctive "and" when it refers to the factors which will be considered in determining whether a new entrant will be treated

comparably to an incumbent. As we stated in Decision No. C96-351, our intent was to enumerate the factors to be considered as they are set forth in § 252(h)(2) of the Act. Decision No. C96-351 at 12. Subsection 252(h)(2) of the Act uses "and." Since our intent was to be consistent with the Act, we will modify Rule 2.2 to substitute "and" for "or" in that portion of the rule which enumerates the factors which will be considered in the determination of whether to treat a new entrant as an incumbent. This change is consistent with our decision today to modify the same definition in the rules adopted in Docket No. 95R-556T.

2. Rule 3.6. Rule 3.6 provides that incumbent facilities-based telecommunications providers charge a wholesale price for services sold for resale, determined according to the standard set forth in § 252(d)(3) of the Act. USWC supported Option 1 for a proposed Rule 4.4, which we considered during our rulemaking proceedings. USWC argues that we should abandon the federally-imposed standard and adopt this proposed Rule 4.4 containing a new definition, that of "relevant cost," as the floor for the determination of the wholesale rate to be charged. We do not believe that USWC has provided either a new argument in support of its porposal or an adequate basis to justify our departure from the requirements of the Act. We will reject USWC's argument.

3. Rule 6. USWC plows old ground when it reiterates its argument that the Commission may not require tariff filings under Rule 6. We have addressed USWC's arguments in Decisions No. C96-

291, C96-347 and C96-351. We will not repeat our reasoning here. We will reject, again, USWC's argument.

4. Rule 7.

a. USWC maintains that if the Commission retains its tariff-filing requirement, Rule 7.1 must be modified to remove the requirement that negotiated agreements may not conflict with effective rates, terms or conditions contained in the tariff of the telecommunications service provider. As we discussed in Decision No. C96-347, at 28,

> a tariff and a negotiation process may coexist where generally available terms and conditions are set forth in tariffs, and other items are left for private negotiations. We note that one of the purposes of a tariff is to ensure that listed terms and conditions ... are publicly known and generally available to all customers on a uniform, nondiscriminatory basis.

We believe that tariff and contract provisions may be construed harmoniously. It is conceivable that we may find that a term in a contract that we review for approval pursuant to § 252 of the Act is inconsistent with the carrier's tariff rates, terms or conditions, but is nonetheless more advantageous to the public than the tariff provisions. At that time, we will be able, on a case-by-case basis, to require that the carrier amend its tariff to reflect the more advantageous contract term in its tariff. We therefore reject USWC's argument.

b. We note that Rule 7.1 as adopted contains language that would require the Commission to process approvals of negotiated contracts under the Commission's Rules of Practice and Procedure. Since the adoption of Decision No. C96-351, we have

adopted emergency rules concerning processing negotiated contracts for Commission approval. These emergency rules are not part of the Rules of Practice and Procedure. Therefore, we will delete the phrase in Rule 7.1 referring to the Commission Rules of Practice and Procedure.

5. Rule 8.1.

a. AT&T argues in its Application for RRR that Rule 8.1 improperly requires resellers to comply with the provisions of § 40-15-502(3), C.R.S. Section 40-15-502(3) provides that rates for basic local exchange service may not rise above certain statutorily-prescribed levels. AT&T is concerned that such a rate limitation could preclude a reseller from recovering its costs to provide basic local exchange service. Rule 8.1, which is simply a requirement that resellers comply with an existing Colorado statute, was proposed as a consensus rule, and we have adopted it verbatim. AT&T has neither explained its departure from consensus nor justified our deviation from the consensus rule as adopted. We will reject AT&T's argument.

b. AT&T also contends that Rule 8.1 may conflict with the Commission's Costing and Pricing Rules. AT&T's concern may be allayed by our opinion that the Costing and Pricing Rules serve as a guide for methodologies to use in pricing telecommunications services. However, if and when the situation arises where there is a fact-specific conflict between the application of Rule 8.1 and of the Costing and Pricing Rules, we will make a determination at that

time as to the proper way of resolving the issue. We will reject AT&T's argument.

6. Rule 8.3. AT&T and MCI object to the Rule 8.3 restriction on resale of services to the same category of customers to whom the service is available from the wholesaler. As we noted in Decision No. C96-351 at 21, the language in Rule 8.3 is taken directly from § 251(c)(4)(B) of the Act. The extent to which we limit resale of services to the same category of customers to whom the wholesaler offers the services may not be a perfect solution to making the transition from monopoly regulation to a competitive market. However, we believe that there are many uncertainties associated with implementation of competition. As we stated in Decision No. C96-351, this restriction is designed to limit arbitrage in the provision of resold services. Future events may show that this restriction is overly broad; however, we do not know that will be the case. Therefore, we intend that we will revisit this issue, at least as soon as we address the issue of revising the definition of basic service as required by § 40-15-502(2), C.R.S. Therefore, we will decline to modify Rule 8.3 as requested by AT&T and MCI.

7. Rule 8.4. Rule 8.4 as adopted is identical with the proposed consensus rule. AT&T argues, however, that this rule may be ambiguous. In order to clarify our intentions, and to remove any ambiguity, we will grant AT&T's Application for RRR in this respect; we will add the word "reseller's" to modify the term "Commission-approved price." Thus, it should be abundantly clear

that the reseller's own Commission-approved price for basic local exchange service must be disclosed on the end-user's bill.

8. With the changes enumerated above, and reflected in the attached Rules for the Resale of Telecommunications Exchange Services, we believe that the rules are consistent with federal and state law. They will assist the Commission in achieving the goal of competition in the local exchange telecommunications market in an appropriate way through the regulation of resale of services. The changes enumerated above should be adopted, and the Applications for RRR should be granted in part and denied in part consistent with the above discussion.

II. ORDER

A. The Commission Orders That

1. The above-enumerated changes to the Rules for the Resale of Telecommunications Exchange Services are adopted, and are reflected in the rules attached as Attachment A.

2. The Applications for Rehearing, Reargument or Reconsideration of MCI Telecommunications Corporation, MFS Intelenet of Colorado, Inc., and US WEST Communications, Inc. are denied.

3. The Applications for Rehearing, Reargument or Reconsideration of AT&T Communications of the Mountain States, Inc. and of TCI Communications, Inc., Teleport Communications Group Inc., and Sprint Communications Company L.P. are denied in part and granted in part.

4. This order shall become effective 20 days following the Mailed Date of this decision in the absence of filing of an application for reconsideration, reargument, or rehearing. In the event an application for reconsideration, reargument, or rehearing to this decision is timely filed, and in the absence of further order of this Commission, this order of adoption shall become final upon a Commission ruling denying any such application.

5. Within 20 days of final Commission action, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Colorado Attorney General regarding the legality of the rules.

6. The adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion of the Colorado Attorney General.

7. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for reconsideration, reargument, or rehearing begins on the first day following the effective date of this order.

8. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING April 25, 1996.

(SEAL)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
RESIGNED EFFECTIVE APRIL 5, 1996.

The meaning of terms used within these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. As used in these rules, unless the context indicates otherwise, the following definitions shall apply:

723-40-2.1 Facilities-based telecommunications provider: A certified provider of telecommunications exchange service who owns facilities.

723-40-2.2 Incumbent facilities-based telecommunications provider: A facilities-based telecommunications provider that, on February 8, 1996, provided telephone exchange service in Colorado and either (a) on such date was a member of the exchange carrier association or (b) is a person or entity that became a successor or assign of a member described in clause (a). If a provider has held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years, such provider shall be considered an incumbent unless the Commission determines that such designation is not in the public interest. A facilities-based telecommunications provider which has not held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years may also be considered an incumbent telecommunication provider if: (a) such provider occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a provider described above; (b) such provider has substantially replaced an incumbent facilities-based telecommunication provider described above; ~~or~~and, (c) the Commission has otherwise determined that such designation is in the public interest.

telecommunications provider shall (1) notify each customer of the reseller's abandonment, discontinuance, or curtailment of service and of the customer's option to receive services directly from the facilities-based telecommunications provider or switch to another provider, and, (2) provide, at a minimum, exchange telecommunications service to each of the reseller's former customers pursuant to the facilities-based telecommunications provider's rates, terms, and conditions, unless the customer requests service from another provider.

723-40-3.6 Subject to Commission approval, an incumbent facilities-based telecommunications provider shall charge resellers a price equal to the retail price the provider charges end-users adjusted for any marketing, billing, collection, and other costs that will be avoided by the incumbent facilities-based telecommunications provider. For purposes of this rule, the price charged to resellers shall also reflect any package discounts the incumbent facilities-based telecommunications provider offers to its end-users for a combination of products if the resold combination of products purchased is identical.

RULE 4 CCR 723-40-4. SERVICE QUALITY.

723-40-4.1 For purposes of compliance with the Commission's Rules Regulating Telecommunications Service Providers and Telephone Utilities (4 CCR 723-2), the reseller is a customer of the facilities-based telecommunications provider.

723-40-4.2 All providers of local exchange services, including resellers, shall comply with all Commission rules applicable to local exchange service providers.

723-40-4.3 The provider of local exchange services that directly interfaces with the end-user is obligated to serve that end-user according to the Commission's rules.